

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF: Jacob Reed Mahaska County, Iowa	ADMINISTRATIVE ORDER NO. 2013-AQ- <i>15</i> NO. 2013-SW- <i>11</i>
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TO: Jacob Reed
3170 Adams Avenue,
Bussey, IA 50044-8014

Jacob Reed
2342 Utah Drive
Bussey, IA 50044-8014

I. SUMMARY

This administrative order is entered into between the Iowa Department of Natural Resources (Department) and Jacob Reed for the purpose of resolving air quality and solid waste disposal violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative order should be directed to:

Relating to technical requirements:

Bill Gibbons, Environmental Specialist
Field Office 5
401 SW 7th St, Suite I,
Des Moines, Iowa 50309
Phone: 515/735-0268

Relating to legal requirements:

Carrie Schoenebaum, Attorney for the DNR

Iowa Department of Natural Resources
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

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II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, the Department has jurisdiction to issue this administrative order.

III. STATEMENT OF FACTS

1. On May 8, 2012, the Department received a complaint alleging a large open dump and open burning area located in a field about ¼ of a mile directly west of the house at 3170 Adams Avenue, Bussey, IA. The legal description for the portion of the property where the open burning and open dumping occurred is Iowa County at Section 19 T74N R17W (the site). Jacob Reed resides at the house referenced above.

2. On May 9, 2012, Bill Gibbons an Environmental Specialist with the Department along with Eric Dursky of Mahaska County Environmental Services, conducted a complaint investigation at the site. Once on site they observed an area approximately one to two acres in size where there was open dumping of various household waste, appliances, furniture, tires, a snowmobile, car batteries, tires, a camping trailer and construction and demolition waste such as shingles, metal siding and lumber scraps. Burn barrels were observed along with various piles of solid waste that had recently been burned. Pictures were taken documenting these observations.

Following the above observations Mr. Gibbons and Mr. Dursky proceeded to the residence located near the site (3170 Adams Avenue). Once there a car pulled into the driveway and the driver identified himself as Jacob Reed's brother. The brother informed Mr. Gibbons and Mr. Dursky that Jacob Reed lived at this address and he and Mr. Gibbons then spoke to Jacob Reed by phone. Jacob Reed confirmed that the property at 3170 Adams Avenue is owned by his parents and he lives there.

3. On June 5, 2012, Mr. Gibbons spoke with Rose Visser who is the deed holder of the site. She stated that it was her understanding that Jacob Reed was responsible for the open burning and open dumping which had occurred on her property.

4. On June 11, 2012 a Notice of Violation (NOV) was sent to Mr. Reed for the above discussed violations. This NOV requested that the solid waste be disposed of properly.

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5. On July 23, 2012, Mr. Gibbons did a follow up inspection of the site and noted that new solid waste materials had been deposited at the site. This solid waste included pieces of green colored metal roofing and soffit. The residence where Jacob Reed was living appeared to have a new green metal roof and soffit which looked like the pieces found in the dumping area.

6. On August 29, 2012, a second NOV was sent to Mr. Reed for the above discussed violations. This NOV also requested that the solid waste be disposed of properly.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The above stated facts demonstrate noncompliance with this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

4. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, Jacob Reed is hereby ordered to do the following:

1. Immediately discontinue the practice of illegal disposal of solid waste and do not engage in such actions in the future;

2. Immediately cease all illegal open burning and do not engage in such actions in the future;

3. Within 30 days of the date the Director signs this order remove all solid waste materials including the burned materials from the site and submit copies of landfill receipts to DNR's Field Office #5 to verify that this has been done; and

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4. Pay a penalty in the amount of \$1,500.00 to the Department within 30 days of the date the Director signs this order. This penalty has been paid.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with a \$1,500.00 penalty. The administrative penalty assessed by this administrative order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the Department consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." It is estimated that it would have cost approximately \$20.25 a ton to properly dispose of the solid waste at a landfill and the scrap tires would have cost between \$1.00-\$5.00 each to dispose of. It is estimated that approximately 5 tons of waste was burned and approximately 10 tires were burned. Therefore, it is estimated that approximately \$250.00 has been saved by not properly disposing of the waste. Therefore, that amount is assessed for this factor.

Gravity of the Violation - Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and poses a risk to human health and the environment. These violations threaten the integrity of the regulatory program because compliance with the open burning and solid waste regulations is required of all persons in this state. Additionally, compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Therefore, \$625.00 is assessed for this factor.

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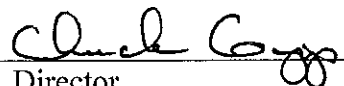
Culpability – Jacob Reed has a duty to remain knowledgeable of the Department's requirements and to be alert to the probability that his conduct is subject to the Department's rules. The open burning and solid waste disposal regulations have been in place for more than 20 years. Based on the above considerations, \$625.00 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code sections 455B.138 and 455B.308, and 561 IAC 7.4(1), as adopted by reference by 567 IAC 7, a written Notice of Appeal may be filed with the Director, at the address provided above, within 30 days of your receipt of this order. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC 7.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative order. Failure to comply with this administrative order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.



Chuck Gipp, Director
Iowa Department of Natural Resources

Dated this 10th day of
May, 2013.

Carrie Schoenebaum; DNR Field Office 5; EPA; VI.C and VII.C.1.

